

**BEST AVAILABLE COPY****RECEIVED  
CENTRAL FAX CENTER****OCT 30 2006****REMARKS**

The above-referenced patent application has been reviewed in light of the Office Action referenced above. Reconsideration of the above-referenced patent application in view of the following remarks is respectfully requested.

Claims 1-6 and 9-40 are pending in the application.

**Notice of not fully responsive Amendment**

The Examiner has stated that the Amendment of July 10, 2006 was not fully responsive under 37 CFR 1.111. Specifically the Examiner has objected to the amendment of the preamble of claim 1 from the previous language of "An apparatus with a combination of a point light source and a single lens, comprising:" to now read "An apparatus comprising:". The Examiner contends that the amended preambles renders the claims of unlimited scope, and are therefore non-responsive under 37 CFR 1.111.

Assignee cannot agree. First, the Examiner previously objected to the preambles of claims 1 and 12 in the January 10, 2006 Office Action asserting that it wasn't clear whether the point light source and the lens in the body of the claims are the same as the ones recited in the preamble. Accordingly, in the Amendment of July 10, 2006, Assignee amended the preambles to remove this duplication; therefore, the reply was fully responsive to the objection and the objection should be withdrawn.

Further, the Examiner has now argued that the preamble as claimed has changed the scope of the claims. This appears to be a new objection rather than an issue of non-responsiveness to the previous objection. However, contrary to the Examiner's assertion, the preamble of the claims, both prior to the amendment and after the amendment, do no limit the scope of the invention. Therefore, the scope of the claims did not change. Specifically, the

## BEST AVAILABLE COPY

preamble is not intended to limit the scope of the claims and, indeed, more often than not the preamble has no limiting effect on the scope of the claims. See for example MPEP 2111.02 "there is no litmus test defining when a preamble limits the scope of a claim". Rather, it is the recitations in the body of the claim that determine the scope of the claims. Therefore, the Examiner is kindly requested to consider that the amendment was responsive to all of the objections in the prior office action.

Even if the scope of the claims did change, which the assignee argues that they did not, this is not impermissible under 37 CFR 1.111. Assignee submits that the Examiner has provided no authority for the proposition that removing language from a claim preamble renders an Amendment non-responsive under 37 CFR 1.111. Conversely, MPEP 714.02 specifically acknowledges that it is proper for claims to be amended by rewriting claims under 37 CFR 1.111, reading in part:

The claims may be amended by canceling particular claims, by presenting new claims, or by rewriting particular claims as indicated in 37 CFR 1.121(c). The requirements of 37 CFR 1.111(b) must be complied with by pointing out the specific distinctions believed to render the claims patentable over the references in presenting arguments in support of new claims and amendments. (See MPEP 714.02).

In the absence of the Examiner pointing to some authority indicating that removing language from a claim preamble renders an Amendment non-responsive under 37 CFR 1.111 Assignee submits that the previous Amendment is fully responsive under 37 CFR 1.111 and requests that examination proceed based on the Amendment of July 10, 2006.

Lastly, Assignee submits that the previous Amendment addresses the patentability of independent claim 1 and dependent claims 2-6 and 9-11 by asserting that amended claim 1 is allowable based on the incorporation of limitations from dependent claim 8, where the subject matter of dependent claim 8 was deemed allowable by the Examiner. Additionally, the previous

**BEST AVAILABLE COPY**

Amendment addresses the patentability of claims 12 (as well as claims 13-40 on the same or similar grounds) by submitting that the Examiner had not established that the cited references disclose all of the elements of independent claim 12, such as, for example, "a point light source, disposed at a first end of said holder; a photodetector, disposed at a second end of said holder opposite said first end, said first end and said second end formed on the same side of said holder". Accordingly, Assignee submits that the previous Amendment is fully responsive to the rejection under 37 CFR 1.111, and Assignee requests that examination proceed based on the Amendment of July 10, 2006.

It is noted that claimed subject matter may be patentably distinguished from the cited references for additional reasons; however, the foregoing is believed to be sufficient. Likewise, it is noted that the Assignee's failure to comment directly upon any of the positions asserted by the Examiner in the office action does not indicate agreement or acquiescence with those asserted positions.

RECEIVED  
CENTRAL FAX CENTER

OCT 30 2006

**BEST AVAILABLE COPY**

**Conclusion**

In light of the foregoing, reconsideration and allowance of the claims is hereby earnestly requested.

**Invitation for a Telephone Interview**

The Examiner is invited to call the undersigned attorney, James J. Lynch, at (503)439-6500 if there remains any issue with allowance.

**Additional Fees**

Any fees or extensions of time believed to be due in connection with this amendment are enclosed herein; however, consider this a request for any extension inadvertently omitted, and charge any additional fees to Deposit Account 50-3703.

Respectfully submitted,  
Attorney for Assignee

Dated: October 30, 2006 /James J. Lynch Reg. No. 50,153/  
James J. Lynch  
Reg. No. 50,153

Customer Number 00043831

Berkeley Law and Technology Group, LLC  
1700 NW 167<sup>th</sup> Place, Suite 240  
Beaverton, OR 97006  
503.439.6500